IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7885 OF 2005

Smt.Gopika Gopal Bhuwad & Ors. ..Petitioners
Versus
Parshuram Dattatray Kolhatkar
and Ors. .. Respondents

Mr.Ameya Tamhane i/b. Ms.Seema Sarnaik for petitioners
Mr.Rakesh Kumar i/b. M/s.Legal Vision for respondent No.1
Mr.A.H.Palekar, A.G.P.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 25th January 2006.

ORAL JUDGEMENT:-

. Rule. Respondents waive service. By consent rule made returnable forthwith.

2. This petition under Article 227 of Constitution of India, challenges an order dated 3rd February 2005 passed by the Dist.Supply

Officer, Ratnagiri setting aside the order dated 20th November 1994 which was passed by Tahsildar Ratnagiri on an application made by petitioners invoking his jurisdiction under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Act for short).

3. The contention of petitioners before me is that Dist.Supply Officer set aside an order which was passed in favour of petitioners as early as on 20th November 1994 and that too without hearing them. The Revision application on which the impugned order is passed was preferred by respondent Nos. 1 to 5.

4. After hearing Mr.Tamhane, holding for Ms.Sarnaik and Mr.Rakesh Kumar for respondents and in the light of the fact that both sides agree that order under challenge is an ex parte order, the same is quashed and set aside.

5. I have noticed that Dist.Supply Officer exercised powers under section 76A of the Act. The said provision reads thus:-

> "76A:- Where no appeal has been filed within the period provided for it, the Collector may, suo motu, or on a reference made in this behalf by the Divisional Officer or the State Government, at any time:-
>
> (a) call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and
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> (b) pass such order thereon as he deems fit;

I invited attention of learned Counsel appearing

for parties to this provision which confers power on the Collector to call for the record of any enquiry or the proceedings before any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality and/or propriety of the order and to the regularity of the proceedings before Mamlatdar or Tribunal. Afte satisfying himself as such, he can pass orders on the reference which is made to him by the Divisional Officer or the State Government or when he proceeds suo mottu. In the present case, that power is purported to be exercised by Dist.Supply Officer, Ratnagiri. Mr.Kumar points out to me that matter could be so heard by this authority because the Collector is empowered to transfer to him the same and in that behalf, he relies upon section 74A of the Tenancy Act and a circular issued by Collector. When the attention of the learned Counsel was invited to the fact that this power of transfer can be exercised by Collector only in case of appeal and powers under section 76A being

salutary in nature and conferred specifically by the Legislature on Collector, both Counsel agree that in the facts and circumstances of the present case, no useful purpose will be served by restoring revision application and/or remanding the same to the authority who has passed the impugned order. Both sides agree that the order under challenge viz., that of the Dist.Supply Officer should be set aside. Learned Counsel appearing for respondents then submits that he is aggrieved by ex parte order passed by Mamlatdar on 20th November 1994 and in the light of statutory provisions, it would not be open for him to go back to the Dist.Supply Officer. Therefore, he may be permitted to approach Tahsildar in appropriate proceedings and if Respondent Nos. 1 to 5 approach him with such an application, the same be decided in accordance with law.

6. Learned Counsel appearing for petitioner

has no objection to respondent Nos. 1 to 5 approaching Tahsilfar, Ratnagiri and making an application. However, it is his submission that the said application be dealt with in accordance with law.

7. In my view, interest of justice would be served if respondent Nos. 1 to 5 are permitted to approach the Tahsildar and if an application is made by them with a request to recall the order dated 20th November 1994, Tahsildar, Ratnagiri to consider the same and pass such orders thereon, after hearing both sides, as are permissible in law.

8. It is equally open for respondent Nos. 1 to 5 to apply to the Collector, Dist.Ratnagiri by an Appeal or appropriate proceedings in the event Tahsildar Ratnagiri is unable to take cognisance of petitioner’s application. The remedy of approaching Collector is always open. Keeping

such remedies and contentions of both sides open in that behalf, present petition is allowed. Order of Dist.Supply Officer is set aside. All concerned to act on an authenticated copy of this order.

9. Rule made absolute in above terms. However, there will be no order as to cost.

(S.C.DHARMADHIKARI, J)